

When recorded, return to:

City of Mesa
Attn: Real Estate Department
20 East Main Street
Mesa, Arizona 85211

SEVENTH AMENDMENT TO DEVELOPMENT AGREEMENT

This Seventh Amendment to Development Agreement (this “Amendment”) is made and entered into as of _____, 2023 by and between City of Mesa, a municipal corporation (“City”), and The Grid at Mesa, LLC, a Delaware limited liability company (“Developer”). City and Developer are sometimes referred to in this Amendment collectively as the “Parties,” or individually as a “Party.”

RECITALS

A. City and 3W Management, LLC, an Arizona limited partnership and, subsequently by assignment dated May 9, 2018, Palladium Grid, LLC, an Arizona limited liability company are parties to that certain Development Agreement dated December 7, 2017 and recorded in the Maricopa County Recorder’s Office as Recording No. 20170915520, that certain First Amendment to Development Agreement dated February 27, 2018, and recorded in the Maricopa County Recorder’s Office as Recording No. 20180149429, that certain Second Amendment to the Development Agreement dated July 25, 2018, and recorded in the Maricopa County Recorder’s Office as Recording No. 20180565588, and that certain Third Amendment to Development Agreement dated December 11, 2018, and recorded in the Maricopa County Recorder’s Office as Recording No. 20180921635, that Fourth Amendment to the Development Agreement dated February 25, 2019, and recorded in the Maricopa County Recorder’s Office as Recording No. 20190149140, and the Fifth Amendment to the Development Agreement dated January 23, 2020, and recorded in the Maricopa County Recorder’s Office as Recording No. 20200071175, and the Sixth Amendment to the Development Agreement dated December 14, 2021 and record in the Maricopa County Recorder’s Office as Recording No. 20211327277(collectively, the “Development Agreement”). The Development Agreement is for a mixed-use commercial and residential development described and defined as the “Project” in the Development Agreement.

B. On October 28, 2019, The Grid at Mesa, LLC, a Delaware limited liability company was formed; and contemporaneously with the execution of the Fifth Amendment Palladium Grid, LLC has assigned the rights and obligations of the Development Agreement to The Grid at Mesa, LLC and The Grid at Mesa, LLC has assumed all of its rights and obligation under the Development Agreement.

C. The City consented to the assignment of the Development Agreement to The Grid at Mesa, LLC so long as The Grid at Mesa, LLC assumes all of the rights and obligations under the Development Agreement.

D. As of the date of this Seventh Amendment the Parties acknowledge that due to delays with the supply chain of certain essential building materials caused a construction delay, Developer has not been able to comply with the dates and requirements in Section 4.12(c) and (d) of the Development Agreement, as amended.

E. Therefore, Developer desires, and City is willing, to further modify the compliance dates and requirements in Section 4.12(c) and (d) of the Development Agreement as set forth in this Amendment.

F. As of the date of this Seventh Amendment, the Parties acknowledge that Developer is not in compliance with Section 4.17.1, as added and stated in the First Amendment to the Development Agreement, and therefore is not entitled to the Economic Development Credits previously included in the Development Agreement.

G. As of the date of this Seventh Amendment, the Parties acknowledge that due to the delays with the supply chain of certain essential building materials, the Developer has not been able to comply with Section 4.17.2(c), as added and stated in the First, Fourth, Fifth and Sixth Amendment to the Development Agreement.

H. The Parties agree that the purpose of this Seventh Amendment is to only amend the compliance dates for the First Phase of the Project. It is not the intent of this Amendment to address or amend the compliance dates for the Second Phase of the Project as stated in Section 4.17(e).

I. Accordingly, the Parties are willing to modify the terms of the Development Agreement, including certain Exhibits, as set forth in this Amendment .

AGREEMENT

IN CONSIDERATION of the foregoing recitals and representations, all of which are fully incorporated into this Amendment and made a part of this Amendment for all purposes, and the mutual covenants and agreements and conditions in this Amendment, the Parties agree as follows:

1. Definitions. All capitalized words and phrases used in this Amendment will have the same meanings as set forth in the Development Agreement (and in the exhibits to the Development Agreement, as applicable), unless a different definition is set forth in this Amendment.

“First Phase of the Project” means the Main Street building located at 233 East Main Street, the necessary demolition and site preparations for the Pomeroy Street improvements, the necessary site preparation for the Minimum Public Improvements, and the necessary site preparation for the Courtyard Apartments and Row Homes.

“Second Phase of the Project” means the Sky Apartments, Courtyard Apartments, Row Homes, Pomeroy street and streetscape improvements, Gateway Park located at 315 East Main Street, the Minimum Public Improvements, City Court Security Measures located at 250 East 1st Avenue, structural safety, and lighting enhancements to the Pomeroy Garage

located at 34 South Pomeroy, and any Additional Public Improvements if Developer elects to make such additional improvements.

2. Amendment to Compliance Dates and Requirements in Section 4.12. The Parties now amend the Development Agreement by modifying the dates and requirements (which were previously amended in the Second, Fourth, Fifth and Sixth Amendments to the Development Agreement) in Section 4.12(c) and (d); accordingly, the Parties agree Section 4.12(c) and (d) are hereby deleted and replaced and set forth in full as follows (all other sections not stated below have not changed):

4.12 Compliance Dates. Developer will perform or complete each of the following on or before the date set forth below for the applicable act and comply with each of following (each, a “Compliance Date”):

(c) Developer shall not be allowed to Commence Construction on the Second Phase of the Project (and any Additional Public Improvements if Developer elects to make such additional improvements) until Developer has completed the Pomeroy street improvements depicted in Exhibit F-2, with the exception of the landscape and curb improvements for the south and west half of the Pomeroy.

(d) On or before February 28, 2024, Developer will Complete Construction on the First Phase of the Project.

3. Customized Review Schedule in Section 3.2 (c). The parties agree to amend the customized review schedule. Review and approval of all plans, applications and other submissions by or on behalf of Developer will be in accordance with the customized review and fee schedule set forth in Exhibit B. The customized review schedule will not result in or require payment of an additional Fee by Developer for expediting the processing and approval of Developer’s submittals. Exhibit B to be removed and replaced with Exhibit B attached to this Amendment.

4. No Obligation to Amend Section 4.12(e) Compliance Dates. Developer acknowledges and agrees that this Seventh Amendment does not amend the compliance dates set forth in Section 4.12(e) (i.e., completion of construction for the Second Phase, all Minimum Improvements, and all Minimum Public Improvements) and that City has not agreed to amend these compliance dates; further Developer acknowledges and agrees that the City has no obligation to enter into any future amendment to amend the compliance dates set forth in Section 4.12(e).

5. Severability. Except as expressly amended by this Amendment and its exhibits, there are no other amendments, modifications or revisions to the Development Agreement (and its exhibits), and all terms and conditions of the Development Agreement (including its exhibits) are and remain in full force and effect.

6. Statutory Notice Requirement. The Parties acknowledge that this Amendment is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

[The signatures of the Parties are on the following two pages.]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date written above.

CITY

CITY OF MESA, ARIZONA,
an Arizona municipal corporation

By: _____

Its: City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Christopher J. Brady the City Manager of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he signed the foregoing instrument on behalf of City.

Notary Public

My commission expires:

DEVELOPER

The Grid at Mesa, LLC

A Delaware limited liability company

By: _____

Its: _____

Managing Partner

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Tony Wall, the Managing Partner of The Grid at Mesa, LLC, a Delaware limited liability company, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

Notary Public

My commission expires:

Exhibit B

CUSTOMIZED REVIEW SCHEDULE

City and the Developer have agreed to a Customized Review Schedule for the Project. The implementation of the Customized Review Schedule will follow the meeting and submittal process below.

Project Review Meetings

1. **Initial Meeting.** Developer will contact the Downtown Transformation Office (“DTO”) to discuss the Project timeline and anticipated needs. The Developer will prepare an anticipated timeline or key Project milestones for this meeting that will include, at a minimum, the planned permit submittal and construction commencement dates. Developer will request this meeting at their earliest ability to allow DTO to coordinate with the Development Services Department to establish the Customized Review Schedule.
2. **Code Analysis Meeting.** If requested by Developer or Developer’s design team, City staff will meet with Developer’s design team prior to submittal of Project documents to discuss any code related questions that arise during the design phase.
3. **Plan Review Comment Meeting(s).** Prior to resubmittal of Project documents, Developer or Developer’s design team may request a meeting with City staff to discuss any questions about the City’s review comments.

Submittal Process

Submittal of plans for the Project will be made in City’s online permitting system (DIMES). At the request of Developer or Developer’s design team, City staff will assist Developer or Developer’s design team with the submittal of Project documents in DIMES.

First Review:

On the date Developer or Developer’s design team submits Project documents in DIMES (“Submission Date”) Developer shall notify City POC of the submittal (“Notification”). If the City POC is not notified on the Submission Date the documents will be reviewed by City pursuant to the City’s standard review cycle which is currently eighteen (18) City business days. Upon receiving Notification and if the submittal documents associated with the Notification are deemed complete and approvable (as determined by City in its reasonable discretion) City will complete a review within [TBD during Project Review Meetings] City business days from the Submission Date, or the first business day thereafter if the Submission Date was not on a business day. For the purposes of this review schedule, a City business day shall be Monday through Thursday, excluding any federal holidays.

Subsequent Review(s):

Developer shall notify City POC of construction document submittal to DIMES on the date of submittal. If the City POC is not notified of the submittal the review cycle will be set to eighteen days (standard review cycle). Upon approval of improvement plans the City shall issue the appropriate permits within [TBD during Project Review Meetings] City business days.

If requested, following the completion of any Subsequent Review, should there be only minor noncompliance issues that need to be addressed prior to the issuance of building permit(s), the Building Official has the option to extend the Subsequent Review period to allow the Development/Project Team time to address such minor comments without a Subsequent Review.

Project Documents

Developer acknowledges and agrees that in order to establish accurate review timeframes in the Customized Review Schedule, it requires Developer submit Project documents that are high quality and include all of the required documentation. City is not required to comply with the Customized Review Schedule if the Project documents are not high quality or do not include all of the required documentation. Should issues with the quality and completeness of the Project documents arise, City will notify Developer within three (3) City business days after receipt of the Project documents and promptly meet with Developer or Developer's design team to resolve the issues.

